

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DAVID MCCRORY,

Plaintiff,

Case No. 14-cv-11992

v

Honorable Thomas L. Ludington
Magistrate Judge David R. Grand

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

**ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING IN PART
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, DENYING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT, AND REMANDING TO THE
ADMINISTRATIVE LAW JUDGE**

On May 19, 2014, Plaintiff David McCrory filed a complaint challenging the Commissioner's denial of his application for Social Security benefits. McCrory claims that he suffers from sarcoidosis and a "lung problem" that prevent him from working. A.R. 165.

On August 6, 2014, McCrory filed a motion for summary judgment, seeking reversal of the Administrative Law Judge's decision denying him social security benefits. On September 29, Defendant Commissioner filed a response motion for summary judgment seeking to have the ALJ's decision affirmed.

On June 23, 2014, Magistrate Judge David R. Grand issued a report recommending that McCrory's motion be granted in part, that the Commissioner's motion be denied, and that the matter be remanded to the ALJ. The Magistrate Judge concluded that the ALJ had erred at Step Five of his review when he posed a hypothetical that did not adequately encompass McCrory's limitations. The ALJ posed to the vocational expert a hypothetical claimant requiring a sit/stand option at 30 minute intervals, and the vocational expert replied that there would be a significant number of jobs in the national economy that would accommodate that sit/stand requirement.

However, McCrory was limited to a sit/stand option *at will*. And “[s]ince the VE never testified about whether McCrory could perform a significant number of jobs in the national economy that encompass a sit/stand option at will, the ALJ’s Step-Five determination is not supported by substantial evidence.” Rep. & Rec. 15. Based on this error, the Magistrate Judge recommended remanding the issue to the ALJ.¹

Although Magistrate Judge Morris’s report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, neither Plaintiff nor Defendants filed any objections. The election not to file objections to the Magistrate Judge’s report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Accordingly, it is **ORDERED** that the magistrate judge’s report and recommendation (ECF No. 17) is **ADOPTED**.

It is further **ORDERED** that Plaintiff McCrory’s Motion for Summary Judgment (ECF No. 14) is **GRANTED IN PART AND DENIED IN PART**.

It is further **ORDERED** that Defendant Commissioner of Social Security’s Motion for Summary Judgment (ECF No. 16) is **DENIED**.

It is further **ORDERED** that this matter is **REMANDED** to the Social Security Administration pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings consistent with this Memorandum and Order.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
 United States District Judge

Dated: July 28, 2015

¹ To the extent that McCrory sought an award of social security benefits without remand to the ALJ, the Magistrate Judge recommended denying that request.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on July 28, 2015.

s/Karri Sandusky
Karri Sandusky, Acting Case Manager